

AMENDED IN SENATE MAY 14, 2002

AMENDED IN SENATE APRIL 30, 2002

**SENATE BILL**

**No. 2000**

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**Introduced by Senator Dunn**

February 22, 2002

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An act to add Title 3.6 (commencing with Section 1883) to Part 4 of Division 3 of the Civil Code, relating to energy resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 2000, as amended, Dunn. Electric power and natural gas: unlawful practices.

Existing law sets forth *the* obligations that arise from particular transactions.

This bill would prohibit any person engaged in the business of generating, selling, distributing, transferring, ~~or~~ marketing, *or trading* electricity or natural gas from engaging in specified unlawful acts or practices. This bill would provide that a person found in violation of these provisions would be required to disgorge the ~~revenue~~ *profits* from the unlawful ~~acts~~ *conduct*, and would be liable for, among other things, 3 times the amount of the disgorgement and attorney fees. The bill would require that actions for relief under these provisions be brought in a court of competent jurisdiction by the Attorney General or by another person, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Title 3.6 (commencing with Section 1883) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 3.6. UNLAWFUL ELECTRIC POWER AND  
NATURAL GAS PRACTICES

~~1883. For purposes of this chapter:~~

~~(a) “Competitive benchmark” for assessing market power is determined as the short-run marginal costs of the highest cost unit needed to meet demand.~~

~~(b) “Exercise of market power” means charging prices above the competitive benchmark.~~

~~(c) “Market power” means the ability to profitably maintain prices above competitive levels for a period of time. A person may also possess market power with respect to significant competitive dimensions other than price such as quality, service, or innovation.~~

~~(d) “Person” means and includes a natural person, corporation, firm, partnership, joint stock company, association, and other organization or entity of persons.~~

~~1883.1. (a) A person engaged in the business of generating, selling, distributing, transferring, or marketing electricity or natural gas may not possess and exercise market power.~~

~~(b) There shall be a rebuttable presumption affecting the burden of proof that market power was exercised in any case in which prices above the competitive benchmark were charged.~~

~~1883.2.~~

*1883. (a) For purposes of this chapter, “person” means and includes a natural person, corporation, firm, partnership, joint stock company, association, or other organization or entity of persons.*

*(b) A person engaged in the business of generating, selling, distributing, transferring, marketing, or trading electricity or natural gas may not engage in any of the following unlawful acts or practices:*

*(1) The physical withholding of electricity from the generation, sale, distribution, transfer, marketing, or trading of electricity, resulting in increased electricity prices or the creation of a scarcity of supply in any electricity market.*

1     (2) *The economic withholding of electricity by submitting bids*  
2 *above the reasonable price for that electricity in a fair and*  
3 *competitive market, resulting in any bid not being accepted so as*  
4 *to force an increase in electricity prices or create a scarcity of*  
5 *supply in any electricity market.*

6     (3) *The acquiring, using, or disseminating of electric system*  
7 *reliability information in connection with the generation, sale,*  
8 *marketing, or trading of electricity, resulting in increased*  
9 *electricity prices by the manipulation of the generation, sale,*  
10 *distribution, transfer, marketing, or trading of electricity.*

11     (4) *The using or providing of false or misleading information*  
12 *in connection with the generation, sale, distribution, transfer,*  
13 *marketing, or trading of electricity, resulting in increased*  
14 *electricity prices.*

15     (5) *The creating, prolonging, or using of shortages or outages*  
16 *to increase the price of electricity.*

17     (6) *The selling, distributing, transferring, marketing, or*  
18 *trading of electricity in any other state, resulting in a reduction of*  
19 *supply to increase the price of electricity.*

20     (7) *The refusing of any dispatch order of any transmission*  
21 *system operator to generate electricity.*

22     (8) *The scheduling of electricity into the electricity*  
23 *transmission system with the intent or knowledge that the schedule*  
24 *will create congestion or the false impression of congestion in that*  
25 *system.*

26     (9) *The overscheduling of electricity generation into the*  
27 *electricity transmission system with the intent or knowledge that*  
28 *the actual load will be lower and result in congestion counterflow*  
29 *payment, or the schedule will result in compensation to reduce*  
30 *congestion.*

31     (10) *The selling, distributing, transferring, marketing, or*  
32 *trading of electricity to any person in any other control area with*  
33 *the intent or knowledge that a similar amount of electricity will be*  
34 *repurchased in the original control area for the purpose of*  
35 *avoiding applicable market rules.*

36     (11) *The intentional or knowing withholding of electricity from*  
37 *any market subject to a price cap with the intent to sell, distribute,*  
38 *transfer, market, or trade the electricity to a market not subject to*  
39 *a price cap.*

1 (12) *The misrepresentation of the availability of electricity or*  
2 *natural gas.*

3 (13) *The misrepresentation of the supply of electricity or*  
4 *natural gas.*

5 (14) *The misrepresentation of the reason or reasons for*  
6 *electricity generating facility closures, outages, or maintenance.*

7 (15) *The selling, distributing, transferring, marketing, or*  
8 *trading of electricity or natural gas between subsidiaries of the*  
9 *same company, resulting in increased electricity or natural gas*  
10 *prices.*

11 (16) *The creation of an artificial increase in demand for*  
12 *natural gas, or refusal to sell natural gas, in order to raise the*  
13 *market price or cause any of the prohibited acts or practices set*  
14 *forth in this subdivision.*

15 (17) *The engaging in strategies, acts, or conduct in the sale,*  
16 *distribution, transfer, marketing, or trading of electricity or*  
17 *natural gas, that results in prices above the reasonable price for*  
18 *that electricity or natural gas in a fair and competitive market.*

19 1883.1. A person who violates Section ~~1883.1~~ 1883 shall, in  
20 addition to other damages, be required to disgorge the revenue that  
21 is equal to the difference between the actual price charged and the  
22 competitive benchmark price as a result of that unlawful conduct.  
23 profits of that unlawful conduct. As used in this section,  
24 “disgorgement” shall be measured by the difference in the actual  
25 price charged and the competitive benchmark price as a result of  
26 that unlawful conduct. In addition, for the electricity or natural  
27 gas in the course of the unlawful conduct and the reasonable price  
28 for that electricity or natural gas in a fair and competitive market.  
29 In addition, a person found to be in violation of Section ~~1883.1~~  
30 1883 shall be liable for three times the amount of damages  
31 sustained, as measured by the amount of disgorgement, because of  
32 the act or acts of that person. A person found to be in violation of  
33 Section ~~1883.1~~ 1883 shall also be liable for the costs of a civil  
34 action brought to recover those damages and attorney fees.

35 ~~1883.3.~~

36 1883.2. (a) Specific or preventive relief may be granted to  
37 enforce a penalty, forfeiture, or penal law in any case of a violation  
38 of Section ~~1883.1~~ 1883.

39 (b) A person who engages, has engaged, or proposes to engage  
40 in any of the conduct set forth in Section ~~1883.1~~ 1883, may be

1 enjoined in any court of competent jurisdiction. The court may  
2 make these orders or judgments, including the appointment of a  
3 receiver, as may be necessary to prevent the use or employment by  
4 a person of a practice or conduct set forth in Section ~~1883.4~~ 1883,  
5 or as may be necessary to restore to a person in interest money or  
6 property. The court shall order the disgorgement of the revenue  
7 from the use or employment of any act or practice prohibited by  
8 Section ~~1883.4~~ 1883, and shall establish a fluid recovery fund for  
9 the return of the funds.

10 ~~1883.4.~~

11 1883.3. Actions for relief pursuant to this chapter shall be  
12 prosecuted exclusively in a court of competent jurisdiction by the  
13 Attorney General, or by a person acting for the interests of itself,  
14 its members, or the general public.

15 ~~1883.5.~~

16 1883.4. Unless otherwise expressly provided, the remedies or  
17 penalties provided by this section are cumulative to each other and  
18 to the remedies or penalties available under all other laws of this  
19 state.

